



**[Billing Code: 6750-01-S]**

## **FEDERAL TRADE COMMISSION**

### **16 CFR Part 436**

#### **Disclosure Requirements and Prohibitions Concerning Franchising**

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Final rule amendments.

**SUMMARY:** The FTC announces revised monetary thresholds for three exemptions from the Franchise Rule. FTC is required to adjust the size of the monetary thresholds every fourth year based upon the Consumer Price Index for all urban consumers published by the Department of Labor.

**DATES:** This final rule is effective July 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Craig Tregillus, Franchise Rule Coordinator, Division of Marketing Practices, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2970, [ctregillus@ftc.gov](mailto:ctregillus@ftc.gov).

#### **SUPPLEMENTARY INFORMATION:**

The FTC's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising" (Franchise Rule or Rule)<sup>1</sup> provides three exemptions based on a monetary threshold: the \$500 "minimum payment exemption,"<sup>2</sup> the \$1 million "large franchise investment exemption"<sup>3</sup> and the \$5 million "large

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<sup>1</sup> 16 CFR Part 436.

<sup>2</sup> 16 CFR 436.8(a)(1).

<sup>3</sup> 16 CFR 436.8(a)(5)(i).

franchisee exemption.”<sup>4</sup> The Rule requires the Commission to “adjust the size of the monetary thresholds every fourth year based upon the . . . Consumer Price Index for all urban consumers published by the Department of Labor.”<sup>5</sup> This requirement, added by the 2007 amendments to the Rule, took effect on July 1, 2007, so that franchisors would have a one-year phase-in period within which to comply with the amended Rule’s revised disclosure requirements before the July 1, 2008, final compliance deadline.<sup>6</sup>

Between 2007 and 2011, the annual average value of the Consumer Price Index for all urban consumers and all items increased by 8.49 percent – from an index value of 207.342 to a value of 224.939.<sup>7</sup> Applying the percentage increase to the three monetary thresholds increases the thresholds as follows:

Exemption	Original Threshold	Adjusted Threshold
Minimum Payment	\$500	\$540 <sup>8</sup>
Large Franchise Investment	\$1,000,000	\$1,084,900
Large franchisee	\$5,000,000	\$5,424,500

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<sup>4</sup> 16 CFR 436.8(a)(5)(ii).

<sup>5</sup> 16 CFR 436.8(b).

<sup>6</sup> 72 FR 15444 (Mar. 30, 2007).

<sup>7</sup> Consumer Price Index, All Urban Consumers (“CPI-U”), *available at* <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.ai.txt>.

<sup>8</sup> The Commission has rounded this figure from \$542.45 to \$540 for compliance clarity and simplicity.

Because the calculation of these thresholds is purely ministerial in nature and implements the Rule's mandatory adjustment mechanism, these adjustments are exempt from the rulemaking procedures specified in section 18 of the FTC Act.<sup>9</sup> In addition, the Commission has determined that notice and comment are unnecessary under the Administrative Procedure Act (APA) for the same reason. The Commission, therefore, has omitted notice and comment for good cause as provided by section 553(b)(B) of the APA.<sup>10</sup> For this reason, the requirements of the Regulatory Flexibility Act also do not apply.<sup>11</sup> Accordingly, the adjusted thresholds will take effect on July 1, 2012.

#### **List of Subjects in 16 CFR Part 436**

Advertising, Business and industry, Franchising, Trade practices.

#### **RULE AMENDMENTS**

For the reasons set out in the preamble of this document, the Federal Trade Commission amends 16 CFR Part 436 as follows:

#### **PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS**

##### **CONCERNING FRANCHISING**

1. The authority citation for part 436 continues to read as follows:

**Authority:** 15 U.S.C. 41-58.

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<sup>9</sup> See 15 U.S.C. 57a(d)(2)(B); 16 CFR 1.15(b) (providing that non-substantive amendments to trade regulation rules are exempt from the rulemaking procedures of Section 18 of the FTC Act).

<sup>10</sup> 5 U.S.C. 553(b)(B) (providing that "good cause" exists to forego notice and comment when public comment is unnecessary).

<sup>11</sup> 5 U.S.C. 603 and 604 (no regulatory flexibility analyses required where the APA does not require public comment).

2. Amend § 436.8 as follows:

- a. In paragraph (a)(1), remove “\$500” and, in its place, add “\$540”;
- b. In paragraph (a)(5)(i), remove all references to “\$1 million” and, in their place, add “\$1,084,900”; and
- c. In paragraph (a)(5)(ii), remove “\$5 million” and, in its place, add “\$5,424,500”.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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